

HOUSE BILL 427

By Alexander

AN ACT to amend Tennessee Code Annotated, Title 40,
relative to electronic monitoring of certain persons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 28, is amended by adding the following as a new part:

40-28-701.

(a) Each agent who, for a fee, monitors a person who is required to wear an electronic monitoring device shall send a report each week to the probation and parole officer supervising the person or to the probation and parole officer's designee. The report shall describe all probation or parole violations detected by an electronic monitoring device for the prior week by the supervised person.

(b) Every monitoring agent shall send weekly reports by facsimile or by electronic means.

(c) A weekly report shall contain all violations for alcohol consumption, drug consumption, out of range report, tampering report, any court-imposed alert, and any other information requested by the local probation and parole office. Global positioning location documents with time stamps shall be provided for out of range reports.

(d) All probation or parole violations involving the installation or deactivation of an electronic monitoring device or a violation of a court order shall be reported to the appropriate probation and parole officer or the probation and parole officer's designee within twenty-four (24) hours of the violation.

40-28-702. Each office or agent who, for a fee, monitors a person on probation or parole who is required by law to wear an electronic monitoring device shall provide access to electronic

data or websites to the person's probation and parole officer or the probation and parole officer's designee for the sole purpose of reviewing monitoring information.

40-28-703. No person placed on probation or parole and ordered by a court to wear an electronic monitoring device shall be released from custody until such electronic device is installed on the person.

40-28-704. Unless the person ordered by a court to wear an electronic monitoring device is indigent, the person may choose an agent authorized to install and monitor the electronic device.

40-28-705. The willful failure to send notifications and weekly reports to a probation and parole officer, as required by § 40-28-701, may result in the suspension or revocation of the authority of the monitoring agent or office to oversee electronic monitoring over persons on probation or parole.

40-28-706.

(a)

(1)

(A) There is created in the state treasury a fund to be known as the electronic monitoring fund. Except as provided in subsection (f), all money in the fund shall be used to pay for the following for persons deemed by the court to be indigent:

(i) The costs associated with the lease, purchase, installation, removal, and maintenance of electronic monitoring devices or any other cost or fee associated with a functioning electronic monitoring device required by this part; and

(ii) The costs associated with the use of a transdermal monitoring device or other alternative alcohol or drug monitoring device, if required by the court.

(B) Notwithstanding subdivision (a)(1)(A), no more than one hundred dollars (\$100) per month shall be expended from the fund to pay

the costs associated with an indigent person's electronic monitoring device pursuant to subdivision (a)(1)(A)(i), or an indigent person's transdermal monitoring device or other alternative alcohol or drug monitoring device, pursuant to subdivision (a)(1)(A)(ii).

(2) Moneys in the fund shall not revert to the general fund of the state, but shall remain available to be used as provided for in subdivision (a)(1).

(3) Interest accruing on investments and deposits of the electronic monitoring fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.

(4) Moneys in the electronic monitoring fund account shall be invested by the state treasurer in accordance with § 9-4-603.

(b) Notwithstanding §§ 40-28-201 and 40-28-202, the costs incurred in order to comply with electronic monitoring requirements shall be paid by the person on probation or parole who is ordered to wear an electronic monitoring device, unless the court finds the person to be indigent. If a court determines that the person is indigent, the court shall order the person to pay any portion of the costs which the person has the ability to pay, as determined by the court. Any portion of the costs the person is unable to pay shall come from the electronic monitoring fund established pursuant to subsection (a).

(c) Whenever a person ordered to wear an electronic monitoring device asserts to the court that the person is indigent and financially unable to pay for a functioning electronic monitoring device, it shall be the duty of the court to conduct a full and complete hearing as to the financial ability of the person to pay for the device and, thereafter, make a finding as to the indigency of such person.

(d) A person is indigent and financially unable to pay for a functioning electronic monitoring device if the person is receiving an annual income, after taxes, of one

hundred eighty-five percent (185%) or less of the poverty guidelines updated periodically in the federal register by the United States department of health and human services under the authority of 42 U.S.C. § 9902(2).

(e) Every person who informs the court that the person is financially unable to pay for a functioning electronic monitoring device shall be required to complete an affidavit of indigency that is designed by the administrative office of the courts for purposes of assisting the court in making a determination pursuant to subsection (c). A person who intentionally misrepresents, falsifies, or withholds any information required by the affidavit of indigency commits perjury as set out in § 39-16-702.

(f) If at any time after July 1, 2017, there are no funds in the electronic monitoring fund or the fund is depleted, any authorized monitoring agent who provides any indigent person required to have a functioning electronic device shall be reimbursed from the electronic monitoring fund when such funds are available. Payments to authorized monitoring agents shall be made in the order requests for payment are received by the state treasurer.

40-28-707. A monitoring agent who installs electronic monitoring devices pursuant to this part shall be authorized by the sentencing judge prior to beginning the installation and monitoring of a person. Each probation and parole office shall maintain a list of all authorized agents and shall provide the list to all individuals ordered to wear an electronic monitoring device. No preference shall be given or expressed for any agent or company authorized to install electronic monitoring devices. Payments for electronic monitoring devices shall be made directly to the agent or company installing and monitoring the device. A failure to make timely payments for an electronic monitoring device is a violation of the terms of the person's probation or parole.

SECTION 2. This act shall take effect July 1, 2017, the public welfare requiring it.